

CIVIL WRIT JURISDICTION CASE No.560 OF 1991

In the matter of an application under Articles  
226 and 227 of the Constitution of India.

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1. SMT.BACHNI DEVI WIDOW OF LATE SHILA KANT JHA
  2. ABHILASHA KUMARI
  3. PRIYA KUMARI BOTH ARE MINOR DAUGHTER OF LATE SHILA KANT JHA, UNDER THE GUARDIANSHIP OF THEIR NATURAL MOTHER SMT. BACHNI DEVI
  4. SMT. LAL DAI, MOTHER OF LATE SHILA KANT JHA AND WIFE OF SHRI BHUP NARAIN JHA
  5. BIJAY KANT JHA S/O KRIT NARAYAN JHA, ALL NOS 1 TO 5 ARE R/O VILLAGE NARPATNAGAR- TENGARAH, PS. BHEJA ( OLD PS. MADHEPUR) DISTT- MATHUBANI----- PETITIONERS

Versus

1. THE STATE OF BIHAR
2. THE ADDITIONAL MEMBER, BOARD OF REVENUE, BIHAR, PATNA
3. THE ADDITIONAL COLLECTOR, MADHUBANI, HAVING HIS OFFICE AT MADHUBANI PS. AND DISTT.--- MADHUBANI
4. THE DEPUTY COLLECTOR LAND REFORMS, JHANCHARPUR
5. KARI JHA S/O OF LATE BALDEO JHA
6. UDAY KUMAR JHA S/O SHIR KARI JHA
7. KRISHNA KUMAR JHA S/O SHIR KARI JHA
8. SHAMBHU KUMAR JHA MINOR SON OF SRI KARI JHA U/G OF HIS FATHER
9. SURESH PATHAK S/O SRI ANKLIT PATHAK R/O -BALIYA, PS. LAKHANPUR, DISTT- MADHUBANI----- REPOONDENTS

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For The Petitioner : MR.B.P.VERMA, SR. ADVOCATE  
M/S DR. MRITYUNJAYA KR. GHAUTAM,  
Y.K. AND R.N.RAY, ADVOCATE

For The Respondent :  
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P R E S E N T

THE HON'BLE MR. JUSTICE AJAY KUMAR TRIPATHI

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A.K.Tripathi,J

Petitioner nos. 1 to 4 coupled with petitioner no. 5

challenge annexures 2,3 and 6 which are orders passed by the relevant authority under a claim filed under section 16 (3) of the consolidation Act which relates to right of pre-emption against a sale deed dated 3.4.1978. Petitioner nos. 1 to 4 are the legal heirs of Shila Kant Jha against whom the initial proceeding was initiated and notice was issued to Shila Kant Jha and Bijay Kant Jha petitioner no.5. During the pendency of the proceeding before LRDC and before passing of the order contained in annexure-2

Shila Kant Jha died but no steps were taken by the claimant to substitute his legal heirs and therefore the order was passed against a dead man. The date of death of Shila Kant Jha is 18.3.1979 and annexure-2 was passed on 16.7.1979. Thereafter an appeal was filed by petitioner no.5 which was dismissed for default and the revision was dismissed on the ground that the Member Board of Revenue did not have power to condone the delay.

Learned Senior counsel appearing on behalf of the petitioner submits that the initial order contained in annexure-2 and all the subsequent orders thereto cannot be sustained because all the orders are against the dead man. No doubt the legal heir, petitioner nos. 1 to 4, have filed revision application after knowledge of the order but Additional Member Board of Revenue dismissed the application erroneously on the ground that it was a belated application and he had no power to condone the delay. However it is urged by the petitioners that under section 29 of the Limitation Act the Member Board of Revenue ought to have exercised power for condonation. This position has been settled by the Hon'ble Supreme Court in a decision reported in **1991 (1) (SC) PLJR 3 (Krishna Kumar Choudhary vs. Alliance Agro Industries Ltd & Ors.)** as well as by the Division Bench of this Court in the case of **Kula Nand Jha & Ors vrs. The State of Bihar & Ors. reported in PLJR 1998 (2) 693.**

But setting aside the order passed by the Member Board of Revenue may not suffice in this connection because of

the circumstances taken note of in the earlier part of the order. All three impugned orders contained in annexures 2, 3 and 6 are hereby set and aside. The matter is remanded back to the original authority for fresh adjudication who shall issue notice to the petitioners afresh and decide the matter on its own merit.

This writ application is allowed.

**(Ajay Kumar Tripathi, J.)**

**Patna High Court, Patna**  
**Dated the 16<sup>th</sup> December, 2008**  
**NAFR (RPS)**

